

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

WALTER DUANE WHITE,

Petitioner,

v.

//

CIVIL ACTION NO. 1:07CV1
(Judge Keeley)

WARDEN JOYCE FRANCIS,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION AND
DENYING PETITIONER'S MOTIONS

Pending before this Court are a Report and Recommendation on a § 2241 petition (dkt. no. 47), a Corrected Report and Recommendation (dkt. no. 48)¹, the pro se petitioner, Walter Duane White's ("White") Motion to Strike Order on Motion to Strike and Motion to Compel Discovery ("Motion to Strike") (dkt. no. 51), also pending is White's Motion for Injunctive Relief and a Temporary Restraining Order (dkt. no. 54). For the reasons stated below, the Court adopts the Report and Recommendation as well as the Corrected Report and Recommendation ("R&Rs"), and denies White's pending motions.

On January 4, 2007, White, a prisoner at the Federal Correctional Institution in Gilmer County, West Virginia ("FCI Gilmer") filed an "Application for Habeas Corpus Pursuant to 28 U.S.C. § 2241." On March 2, 2007, United States Magistrate Judge

¹ The only difference between the two Report and Recommendations is the correction of a typographical error.

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James E. Seibert issued a report and recommendation recommending that this Court dismiss without prejudice all but one of White's claims and order the respondent, Warden Joyce Francis ("Francis"), to show cause why the writ should not be granted as to White's disciplinary claim. On June 1, 2007, this Court entered an order adopting the report and recommendation and denying all pending motions.

On December 6, 2007, Judge Seibert entered an R&R (dkt. no. 47) recommending that this Court deny White's motion for default judgment (dkt. no. 35), and followed that on December 10, 2007, with a corrected R&R correcting a typographical error (dkt. no. 48).

The R&Rs informed White that failure to object to the magistrate judge's recommendations would result in the waiver of his appellate rights on those issues. Nevertheless, White filed no objections to the R&Rs.² Instead, on December 12, 2007, he filed a "Motion to Strike Magistrates Order and Order Compelling Discovery on Defendant" ("Motion to Strike", dkt. no. 51).

² White's failure to object to the Report and Recommendations not only waives his appellate rights in this matter, but also relieves the Court of any obligation to conduct a *de novo* review of the issue presented. See *Thomas v. Arn*, 474 U.S. 140, 148-153 (1985); *Wells v. Shriners Hosp.*, 109 F.3d 198, 199-200 (4th Cir. 1997).

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Subsequently, White filed memoranda to buttress his motion to strike (dkt. nos. 52 & 54). He also moved for injunctive relief and a temporary restraining order (dkt. no. 55), and filed an accompanying memorandum (dkt. no. 56).

In his Motion to Strike, White asserts that the Magistrate Judge erred in (1) denying his motions for a Rule 26(f) hearing and (2) granting Francis's motion to strike plaintiff's first set of interrogatories. Upon de novo review, the Court finds that the Magistrate Judge properly applied Rule 6(a) of the Rules Governing Section 2254 Cases in the United States District Courts, Fed. R. Civ. P. 26(d), Fed. R. Civ. P. 26(f) and Fed. R. Civ. P. 33(a). Consequently, the Court affirms the Magistrate Judge's orders.

In his motion for injunctive relief and a temporary restraining order, White requests that the Court not mail him any more "legal papers" until his transfer to USP Hazelton is completed and he requests that this Court intervene to prevent the transfer. Upon contact with the Bureau of Prisons, the Court has determined that White has already been transferred to USP Hazelton. Consequently, the Court **DENIES** the motion **AS MOOT**.

Given that White did not object to the R&Rs, the Court **AFFIRMS** Magistrate Judge Seibert's R&Rs (dkt. nos. 47 & 48), and **DENIES**

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White's motion for default judgment (dkt. no. 35). For the reasons stated above, the Court also **DENIES** White's Motion to Strike (dkt. no. 51) and **DENIES AS MOOT** White's motion for injunctive relief and a temporary restraining order (dkt. no. 55).

It is so **ORDERED**.

The Clerk is directed to mail a copy of this Order to the pro se petitioner, certified mail, return receipt requested, and transmit a copy of this Order to all appropriate agencies.

Dated: February 25, 2008.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE